

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)	IN PROCEEDINGS UNDER
)	CHAPTER 13
DENNIS A. HEAVRIN,)	
)	BANKRUPTCY NO. 09-41262
Debtor.)	
)	
XX)	
)	
THE BANK OF CARBONDALE,)	MOTION FOR RELIEF FROM
)	AUTOMATIC STAY AND TO
Movant,)	ABANDON PROPERTY
)	
v.)	
)	
DENNIS A. HEAVRIN,)	
)	
Respondent.)	

MOTION FOR RELIEF FROM AUTOMATIC STAY
AND TO ABANDON PROPERTY

NOW COMES, Movant, The Bank of Carbondale, by its attorneys, Scott P. Hendricks and Cynthia A. Hagan, and for its Motion for Relief from Automatic Stay and to Abandon Property states, pursuant to Bankruptcy Rule 4001 and 6007 and 11 U.S.C. Sections 362, 506 and 554(b), as follows:

JURISDICTION

1. This Court has jurisdiction over this matter under 28 U.S.C. Sections 151, 157, and 1334, as this proceeding arises in the Chapter 13 case of the above-named Debtor.
2. The Bank of Carbondale ("TBOC") is the lienholder of certain real estate located in DeSoto, Jackson County, Illinois, by virtue of a mortgage on Debtor's real estate.
3. Dennis A. Heavrin ("Debtor") is an individual and is the Debtor in the Chapter 13 case

in which this proceeding is filed.

4. Bob Kearney ("Trustee") is the trustee in the Chapter 13 case in which this proceeding is filed.

CLAIM FOR RELIEF FROM AUTOMATIC STAY

5. The Bank of Carbondale ("TBOC") is the holder of a certain Loan and Security Agreement ("Loan") executed and delivered by Debtor as of March 23, 2009, in consideration of credit by TBOC to Debtor, wherein Debtor promised to pay to TBOC monthly payments with interest thereon at a rate of 4.750%, all as set forth more fully therein. A true and correct copy of the Loan is attached hereto as Exhibit "A" and incorporated herein by reference.

6. The Loan is secured by a lien in favor of TBOC in Debtor's real estate located at 619 Russell Street, DeSoto, IL 62924 (the "Real Estate").

7. TBOC's security interest in the Real Estate is properly perfected as evidenced by the recorded mortgage dated March 23, 2009, recorded on March 26, 2009, and attached hereto as Exhibit "B" and incorporated herein by reference (the "Mortgage").

8. Pursuant to the Loan and the Mortgage, Debtor promised to pay all costs of collection of TBOC incurred in connection therewith, including, without limitation, attorneys' fees and expenses.

9. On July 29, 2009 ("Petition Date"), Debtor filed for relief under Chapter 13 of Title 11 of the United States Code.

10. As of the filing date of the petition, Debtor was indebted to TBOC pursuant to the Loan in the amount of \$73,799.20.

11. As of the petition date the fair market value of the Real Estate was significantly less than the balance of the loan on the date of filing.

12. The Debtor's Chapter 13 Plan provides for surrender of the Real Estate, Debtor do not intend to pay for the Real Estate.

13. TBOC's interest in the Real Estate is not adequately protected in this proceeding because the Debtor is not paying Movant.

14. Therefore, pursuant to 11 U.S.C. Section 362(d)(1), TBOC is entitled to relief from the automatic stay for cause to exercise its right to the Real Estate.

WHEREFORE, TBOC prays this court enter an Order:

- (a) granting TBOC relief from the 11 U.S.C. Section 362(a) automatic stay, thereby allowing TBOC to exercise its right to the Real Estate; and,
- (b) directing Trustee to abandon the Real Estate; and
- (c) granting TBOC such other and further relief as the Court deems just and proper.

Respectfully Submitted,

/s/ Scott P. Hendricks
Scott P. Hendricks, 06184949
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Attorneys for Movant

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SUMMARY OF EXHIBITS

The following exhibits pertain to the Motion for Relief from Automatic Stay and Abandonment
filed by The Bank of Carbondale on August 21, 2009:

- A. Loan
- B. Mortgage

/s/ Scott P. Hendricks
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of MOTION FOR RELIEF FROM AUTOMATIC STAY AND FOR ABANDONMENT, SUMMARY OF EXHIBITS, NOTICE OF MOTION, PROPOSED ORDER and this CERTIFICATE OF SERVICE were mailed to all parties who have NOT BEEN ELECTRONICALLY NOTIFIED by enclosing the same in an envelope with postage fully prepaid, and by depositing said envelope in a U.S. Post Office mail box in Carbondale, Illinois on the 21st day of August, 2009.

Jay Howd
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Bob Kearney
Chapter 13 Trustee
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U.S. Trustee, Region X
Becker Building
401 Main, Room 1100
Peoria, IL 61602

/s/ Monica Reid